IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

CRL.A.No. 1800 of 2003()

CC.745/1999 ON THE FILE OF THE COURT OF THE ADDL. SESSIONS JUDGE (ADHOC) II, KASARAGOD
CP.149/1999 of JUDL. MAGISTRATE OF FIRST CLASS-II, HOSDRUG

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APPELLANT: PETITIONER.

K.KRISHNAN, AGED 28 YEARS,
S/O.MARI, THAMARA VEEDU,
CHEMMANCHERI, BALAL VILLAGE.

BY ADV. SRI.M.SASINDRAN
SRI.SREEJITH S.NAIR

RESPONDENTS: RESPONDENT.

STATE REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P.SRI.THOMAS JOHN AMBOOKKAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13-8-2007 , THE COURT ON 13/08/2007 DELIVERED THE FOLLOWING:

Crl.M.A.No. 11514/2003 in Crl.A.No. 1800/2003

Dismissed.

13th August, 2007

Sd/-K. Thankappan,
Judge.

mn.

K.Thankappan,J.

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Crl.L.P.No. /2006

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Judgment

-12-2006

K.Thankappan, J.

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Crl. A. No. 1800 of 2003

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Dated this the 13th day of August,2007

JUDGMENT

Appellant, accused in S.C. No.745/1999 on the file of the Court of the Addl.Sessions Judge (Adhoc) II, Kasaragod, faced trial for offence punishable under section 55(g) of the the Abkari Act on the allegation that he was found in possession of 90 litres of wash. Relying on the evidence of PWs.1 to 5 and Exts.P1 to P8, the trial court found the appellant guilty under section 55(g)of the the Abkari Act and he was convicted thereunder and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,00,000/- and in default to undergo rigorous imprisonment for three months. The conviction and sentence awarded against the appellant are assailed in this appeal.

2. This Court heard learned counsel for the appellant and learned Public Prosecutor.

3. Learned counsel for the appellant has taken the following contentions in challenging the judgment under appeal:- The first contention of the learned counsel is that the trial court has committed serious error in finding the appellant guilty of the charges relying on the evidence of PWs.1, 4 and 5, as their evidence has not been corroborated by any independent

evidence. The second contention is that the trial court ought to have found that the prosecution had not proved the case beyond reasonable doubt regarding the seizure of the contraband article and also the ownership of the house. The third contention is that PW1 who detected the offence had not given any acceptable explanation for the delay in producing the contraband article before the court and had not given any explanation regarding the safe custody of the contraband article till the same was produced before the court.

4. The prosecution case is that the appellant was found in possession of 90 litres of wash. The evidence of PW1 would show that on 9-7-1999 when he got information that the appellant had kept wash on the back side of his house, he proceeded to the house of the appellant and on search he found that six tins of 16 litres capacity each with 15 x 6 litres wash was kept on the back side of house No.BP -V/507 in Balal Village. PW4, Sub Inspector of Police, stated that he continued the inevestigation of the crime and sent sample for chemical analysis. PW5, Sub Inspector of Police, stated that he filed final charge. As per Ext.P8 chemical analysis report, the sample contained 12.46% and 12.50% etyle alcohol. Though PWs.2 and 3 were examined as independent witnesses, they turned hostile to the prosecution. PW3 was the Secretary, Balal Grama Panchayat who

issued Ext.P6 ownership certificate. It is certified that building No.V/507 of Balal Grama Panchayat belongs to Mari, S/o.Pallathan Champancheri.

5. PW1 stated that he had got information that the appellant had kept wash in house No.BP-V/507 in Balal Village. He had not given any evidence regarding the ownership of the house and also the members who are residing in the house. In this context, the evidence of PW3 who had issued Ext.P6 is relevant. He stated that the house belongs to one Mary, Pallathan Champanchari. When the appellant was questioned under section 313 Cr.P.C., his specific case was sthat the house belongs to his uncle and he came to the house on the date of the incident only to invite the residents in connection with a marriage. In this context, the evidence of PWs.4 and 5 are relevant as they had stated that they had no knowledge about the residents. Ext.P6 shows that father of the appellant was the owner ofbuilding No.V/507. Father of the appellant was not made an accused and he was not questioned by the officials. PW1 stated that he had made a search of the house, but there is no evidence forthcoming from him whether he had prepared any search list or got permission for the same. It has come out in evidence that there was some delay in producing the thondi articles and that there is no evidence to show that the sample and the residue were kept under safe custody. PW1 stated that he sent accompanying officer to

detail the appellant and accordingly the accompanying officer detained the appellant. But the accompanying officer was not examined. In the above circumstances, this Court is of the view that the case of the prosecution that the contraband article alleged to have been seized from the appellant was doubtful. Hence, the prosecution has failed to establish possession of the contraband by the appellant.

6. In the circumstances, the conviction and sentence entered against the appellant are set aside and the appellant is acquitted of the charges. The bail bond executed by the appellant shall stand cancelled. It is made clear that if any amount has been deposited by the appeallant by way of fine, it shall be refunded to him as per law.

The appeal is allowed as above.

K. Thankappan,
Judge.

K. Thankappan,J.

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Crl.A. No. 748 /2007

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Judgment

10-7-2007